# Supreme Court of the United States

OCTOBER TERM, 1940.

WILLIAM CAMPBELL,
*Petitioner (Plaintiff)*,

AGAINST

AMERICAN FOREIGN STEAMSHIP CORPORATION,
*Respondent (Defendant)*.

## Brief in Support of Petition for Writ of Certiorari.

The jurisdictional basis for the petition, a statement of the case, and the opinions of the courts below, are all stated in the petition, and, therefore, need not be repeated here.

### Specification of Errors.

The decision of the Circuit Court of Appeals for the Second Circuit conflicts with the opinion of the United States Supreme Court in holding that a lump sum award for maintenance and cure may not be made to a seaman predicated upon injuries suffered in the course of his employment aboard a vessel; in holding that a jury's verdict supported by evidence may be set aside by the Circuit Court of Appeals; in holding that medical testimony given with a reasonable degree of medical cer-

tainty based upon extensive experience in many similar cases, is incompetent; and in holding that medical testimony, in order to support a jury's verdict for future disability, must be given with mathematical certainty and cannot be based on reasonable medical certainty for an approximate period of time.

## Summary of Argument.

A lump sum award should be permitted to a seaman injured in the course of his employment aboard a vessel.

United States Marine Hospital records, testimony by an attending physician of treatment over a long period of time, estimates as to future disability by recognized medical experts based on experience obtained from treating numerous similar cases, given with a reasonable degree of medical certainty and approximating the period of future disability, should be considered good and sufficient evidence to support a jury's verdict.

## Argument.

The petitioner contends that the intent of the United States Supreme Court was clearly expressed in the opinion in the case of *Calmar S. S. Corp.* v. *Taylor,* 303 U. S. 525, where on page 530, the Court stated:

> "There remain the questions whether in the case of chronic illness the duty (to provide maintenance and cure) continues so long as medical attendance and care are beneficial * * * and where a lump sum may be awarded to defray the cost of meeting the anticipated need.
>
> In answering the first, we lay to one side those cases where the incapacity is caused by the employment. As to them considerations not present here may apply, which might be thought to require

a more liberal application of the rule than we think is called for in this case."

It is conceded that the petitioner was injured in the course of his employment aboard the *S. S. Wildwood.*

The evidence clearly established that the petitioner required further treatment at the time of the trial (R., 81, 82).

The jury was given the complete hospital records and the petitioner offered on his behalf the testimony of the attending physician of the United States Marine Hospital, who was the Chief of the Division of the United States Marine Hospital, dealing with brain damage cases, and in addition thereto one of the leading experts of the country in this phase of medicine, who was conceded by the defendant to be an authority on the subject. All of this evidence is competent and ample; from it a jury might determine a reasonable sum that the litigant is entitled to for future as well as past maintenance and cure.

However, the petitioner went further and showed the period of future disability by sufficient and competent medical experts.

The petitioner, in addition to producing hospital records and having the testimony of the United States Marine doctor who treated him while he was a patient therein, proved by medical experts the approximate period of time that he would require further treatment. This proof was by recognized medical authorities in the treatment of brain damage given with a reasonable degree of medical certainty and predicated upon extensive experience in this particular field of medicine.

Such proof is competent and adequate.

At all times, the Courts of this country have considered testimony by experts based on their experience as good evidence and there is no reason why this rule should be changed at the present time.

*Cunningham* v. *N. Y. C. R. R. Co.*, 49 F. 439 C. C. N. Y. (1892);
*Green* v *Hendrix*, 69 F. (2d) 404 C. C. A. 7th (1934);
*McConnell* v. *U. S.*, 81 F. (2d) 639 C. C. A. 3rd (1936).

The right to maintenance and cure does not cease on the day the patient leaves the hospital or on the day of trial, but it continues until the patient receives the maximum benefit of medical and surgical aid and attendance.

In the *Bouker No. 2*, 241 Fed. 831, the Court stated on page 835, that a seaman is entitled to maintenance and cure

> "For a reasonable time after the termination of voyage and wage relation * * *. It thus appears that the limits of cure or care, both as to kind of treatment and time of continuance, must always depend on the facts of each particular case."

*The Point Fermin*, 70 Fed. (2d) 602;
*Stevens* v. *R. O'Brien and Co.*, 62 Fed. (2d) 632.

The jury's verdict supported by evidence should not be interfered with by the Court.

*Smith* v. *Socony Vacuum*, 96 Fed. (2d) 98 affirmed 305 U. S. 424.

**Conclusion.**

It is respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers in order that the law on this important question may be definitely settled and that uniformity of decision between the Circuit Courts be established, and to that end that a Writ of Certiorari be granted.

Respectfully submitted,

RUTH GOTTDIENER,
*Counsel for Petitioner.*